

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK S. MUSZYNSKI, P72738,)	
)	
Petitioner,)	No. C 12-2021 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
RANDY GROUNDS, Warden,)	(Docket # 4)
)	
Respondent.)	


Petitioner, a state prisoner at the Correctional Training Facility in Soledad, California, has filed a second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254. His first petition was dismissed as untimely. See Muszynski v. Small, No. C 08-4244 CRB (PR) (N.D. Cal. Dec. 8, 2009) (order granting motion to dismiss petition as untimely under 28 U.S.C. § 2244(d)).

A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A); see also McNabb v. Yates, 576 F.3d 1028, 1029 (9th Cir. 2009) (§ 2244(b) applies where first petition was dismissed as untimely because such dismissal constitutes disposition on merits). Petitioner has not obtained such an order from the Ninth Circuit. The instant petition accordingly is DISMISSED without prejudice to refiling if petitioner obtains the necessary order.

1 Based solely on petitioner's affidavit of poverty, his motion (docket # 4) to
2 proceed in forma pauperis is granted.

3 The clerk shall terminate all pending motions as moot and close the file.
4 SO ORDERED.

5 DATED: June 19, 2012


6 CHARLES R. BREYER
7 United States District Judge
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